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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

AHSAN MOHIUDDIN,

Plaintiff and Appellant,

v.

FIRST TRANSIT, INC.,

Defendant and Respondent.

B196395

(Los Angeles County
Super. Ct. No. BC323663)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jane L. Johnson, Judge. Affirmed.

Ahsan Mohiuddin, in pro. per., for Plaintiff and Appellant.

Law Offices of Goates & Beavers and R. Wesley Beavers for Defendant and Respondent.

Plaintiff appeals from a judgment in favor of defendant First Transit, Inc., entered after the trial court granted First Transit's motion for judgment on the pleadings on the ground that the action was barred by the statute of limitations. We affirm the judgment because the motion for judgment on the pleadings was properly noticed and the first amended complaint shows on its face that it is barred by both the one-year and the two-year statute of limitations. Plaintiff also did not allege sufficient facts to invoke the equitable estoppel doctrine as a bar to First Transit's statute of limitations defense.

BACKGROUND

In reviewing a judgment on the pleadings to determine whether the complaint states a valid claim, we treat the properly pleaded allegations of the complaint as true and also consider those matters subject to judicial notice. (*Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1401.) "A pleading which on its face is barred by the statute of limitations does not state a viable cause of action and is subject to judgment on the pleadings." (*Hunt v. County of Shasta* (1990) 225 Cal.App.3d 432, 440.)

The first amended complaint alleged the following: On June 8, 2001, the 56-year-old plaintiff was a passenger on a City of Los Angeles DASH shuttle bus and was getting ready to disembark when the bus collided with a car. Plaintiff was flung to the floor on his buttocks and hands. First Transit managed, operated, and maintained the DASH shuttle bus under a contract with the City of Los Angeles (City), also a defendant. Plaintiff asserted that "either the bus had manufacturing/design defects or the driver operating the bus . . . , who was these defendants' employee or independent contractor, was of questionable driving credentials/qualifications since his misjudgment or unsound judgment to drive at [an unsafe speed] caused or contributed to the . . . accident."

A few weeks after the accident, plaintiff experienced intermittent panic attacks with intense pain in his left thigh. On December 5, 2001, plaintiff filed a claim with the City, seeking over \$50,000 in damages and stating that the accident resulted in an "impaired/dysfunctional left hip & left leg," and that he limped and had pain in his upper left leg and hip. In January 2002, plaintiff experienced pain in his left hip and was admitted to the hospital for two days; he was diagnosed with "'Myopathy'" or trauma of

the muscles. Plaintiff's pain disappeared until August 2002, when he again sought medical care and received pain shots and prescription pain killers. Similar episodes of pain occurred in November 2002, February 2003, and April 2003, when no diagnosis was made, or an "incorrect diagnosis was made such as Arthritis and Osteoporosis" In late October 2003, an orthopedic surgeon diagnosed plaintiff with an advanced case of necrosis of the left hip joint and a milder form of necrosis in his right hip. In December 2003, plaintiff underwent total hip replacement surgery. It was not until his postsurgical recovery in the hospital in the second week in December 2003, that the conditions in his hips were "linked to the bus accident in June 2001."

In April 2004, the City sent a letter about plaintiff's claim to codefendant Creative Bus Sales, the alleged manufacturer and seller of the DASH shuttle bus. In May 2004, the insurer for Creative Bus Sales wrote plaintiff a letter stating in part that Creative Bus Sales was not liable for plaintiff's damages, did not have anything to do with the manufacture or operation of the buses that they sell, and that the "Statute of Limitations has run its course as well." The letter also stated that "Section 11583 of the Insurance Code requires that we notify you that the statute of limitations for bringing a personal injury action is two years from the date of the loss."¹

In June 2004, plaintiff filed another claim for damages with the City, stating that his fall in the bus in June 2001 "caused a complex neurological dysfunction of certain nerves catering to the hip joints (both) which remained latent & kept causing damage to the bone/bone joint of the hip, until surgery/surgical replacement became the only option

¹ "In 2002, the Legislature amended [Code of Civil Procedure] section 340, subdivision (3), to delete the one-year limitations period for personal injury actions. At the same time, it added [Code of Civil Procedure] section 335.1, which now provides a two-year statute of limitations for such actions." (*Krupnick v. Duke Energy Morro Bay* (2004) 115 Cal.App.4th 1026, 1028 [Code of Civil Procedure section 335.1 did not apply retroactively to personal injury action filed in 2003 based on accident in 2001].)

Unspecified statutory references are to the Code of Civil Procedure.

to restore mobility” In the claim form, plaintiff also alleged that the “original injury” was sustained in the June 2001 accident, “but was neither fully discovered nor linked to that accident until 12/09/03.”

Plaintiff filed his original complaint on October 27, 2004, and a first amended complaint (complaint) on February 17, 2005. The complaint contained four “causes of action,” all sounding in negligence, but labeled according to different elements of damages, to wit: (1) “loss of limb,” (2) “pain, physical suffering, emotional distress,” (3) “loss of earnings, past & futuristic,” and (4) “medical, rehabilitation & related expenses.” The complaint also alleged that the defendants conspired among themselves to “stall” plaintiff’s claims filed with the City until the statute of limitations had expired. He asserts that the City, through its employees, made misrepresentations concerning the status of his claim and concerning the liability insurance of City’s independent contractors, including First Transit. Plaintiff alleged that he relied upon these false assurances by the City “to his detriment in that the 2-year statute of limitations on his personal injury claim expired before he realized or it became evident to him that such statements and assurances were false.”

In August 2005, First Transit filed and served on plaintiff a motion for judgment on the pleadings on the ground that the complaint showed on its face that it was barred by the one-year statute of limitations. First Transit’s motion was scheduled to be heard in October 2005, but in September 2005, the trial court ordered a stay of the proceedings after plaintiff filed an appeal from a judgment of dismissal as to defendant Creative Bus Sales. In an unpublished opinion filed in July 2006, we affirmed the judgment of dismissal as to Creative Bus Sales. (*Mohiuddin v. Creative Bus Sales, Inc.* (July 31, 2006, B185192).)

The trial court ordered a case management conference for October 5, 2006. Plaintiff appeared at the conference on October 5, 2006, when the court ordered that First Transit’s previously filed motion for judgment on the pleadings was to be heard on November 8, 2006. On October 9, 2006, plaintiff was served with a notice of the November 8 hearing on First Transit’s motion.

On October 26, 2006, plaintiff filed opposition to First Transit's motion for judgment on the pleadings. Plaintiff argued that his complaint could be amended to state viable causes of action for fraud and an estoppel against First Transit to assert the statute of limitations defense. In an argument that plaintiff characterized as based on due process principles, plaintiff also asserted that page 6 of First Transit's answer (containing the statute of limitations affirmative defense) should be stricken as a sanction for its attorney's alleged tampering with the court file by inserting a date on a declaration accompanying the "Notice of Errata" containing page 6 of First Transit's answer. According to plaintiff, the declaration was originally filed without a date and the date was improperly added to the document at a later time.

In its reply brief, First Transit explained that the answer was filed on June 20, 2005, without its page 6, which contained a number of affirmative defenses. The error was corrected on June 22, 2005, by filing a "Notice of Errata" with the missing page of the answer.

On November 3, 2006, plaintiff filed an objection to the hearing date on the motion, claiming that a courtesy copy of the motion, filed on October 31, 2006, did not provide the proper 21-day notice. He also argued that the motion should be stricken because the attorney who filed the motion in 2005 had substituted out of the case. But on November 3, 2006, an association of counsel was filed to associate that attorney as counsel of record for First Transit.

At the hearing on November 8, 2006, counsel for First Transit and the trial court explained that the clerk's office could not find the motion for judgment on the pleadings in the court file, so First Transit's counsel had sent a copy of the motion to the clerk, who had filed it on October 31, 2006. After argument, the court granted the motion for judgment on the pleadings on the ground of the bar of the statute of limitations.

On November 17, 2006, the trial court denied plaintiff's motion for "leave to complete discovery," filed in October 2006. In the motion, plaintiff stated that he was awaiting First Transit's responses to interrogatories and demand for production of documents and hoped to soon schedule depositions on matters relating to First Transit's

liability for his injuries and also pertaining to plaintiff's allegations that First Transit conspired with the other defendants to avoid their liability, to stall their investigation of the accident, to conceal the name of the owner of the bus involved in the accident and to create "'fake'" investigations and accident reports in order to stall his claims until after expiration of the statute of limitations.

Plaintiff filed a motion to vacate the November 8, 2006 order; the motion was denied on December 7, 2006. On December 14, 2006, plaintiff filed a motion for leave to file a second amended complaint; the motion was denied on January 9, 2007.

On January 16, 2007, plaintiff filed a notice of appeal from "the judgment entered in favor of defendant First Transit, Inc. on November 20, 2006."

DISCUSSION

In a brief which lacks headings for each legal issue discussed, plaintiff challenges not only the ruling on First Transit's motion for judgment on the pleadings, but three subsequent rulings denying his motions for "leave to complete discovery," for leave to file a second amended complaint, and to vacate the November 8, 2006 ruling.

Although we liberally construe notices of appeal, the notice must identify the particular judgment or order being appealed. (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239.) Plaintiff's notice of appeal refers only to the judgment on the pleadings and not to the three orders made after that judgment, so we lack jurisdiction to consider the orders denying plaintiff's motions.

Plaintiff contends that the one-year statute of limitations was not properly raised in First Transit's answer because a single affirmative defense of the statute of limitations listed seven different provisions of the Code of Civil Procedure. Assuming that the answer contained a pleading defect, plaintiff forfeited the point by failing to raise it below. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 912.)

Plaintiff also argues that the motion for judgment on the pleadings was not properly before the court because he was not afforded the statutorily required 21-day notice after a copy of the motion was filed with the court on October 31, 2006. But the

filing of a copy of the motion on October 31 was only a courtesy copy for the court and did not detract from the proper notice provided to plaintiff in early October 2006. Accordingly, plaintiff's challenge to the adequacy of the notice of the motion is not well taken.

Without merit are plaintiff's assertions that the prior opinion on the appeal by Creative Bus Sales was "incorrectly decided" and that such prior opinion was not a proper basis for the granting of First Transit's motion for judgment on the pleadings. But neither First Transit nor the trial court relied on the prior appellate opinion, which is final and not before us.

Finally, plaintiff does not establish error with respect to the merits of the order granting the motion for judgment on the pleadings. Plaintiff asserts that the complaint sufficiently pleads that First Transit is estopped to assert the statute of limitations defense. We disagree.

Under appropriate circumstances, the doctrine of equitable estoppel will preclude a defendant from relying upon the bar of the statute of limitations if the plaintiff has been induced to refrain from bringing a timely suit by the fraud, misrepresentation or deception of the defendant. (*Sofranek v. County of Merced* (2007) 146 Cal.App.4th 1238, 1250.) But "[t]he defendant's statement or conduct must amount to a misrepresentation bearing on the *necessity* of bringing a timely suit; the defendant's mere denial of *legal liability* does not set up an estoppel." (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 384, fn. 18 (*Lantzy*).)

The complaint alleged conspiracy and fraud with respect to the City's "stalling" tactics in handling his claim against the City. Specifically, plaintiff alleged that the City made "assurances that his claim [was] being processed impliedly favorably through contact with 'appropriate' insurance[,] knowing that such assurances were false since [the City allowed First Transit and Creative Bus Sales] to operate its DASH shuttle bus services without carrying proper liability insurance mandated by law." Plaintiff further alleged that from February 2002 to December 2003, he was in frequent contact with the City employees in connection with the status of his first claim filed with City in

December 2001; each time, plaintiff was told that his claim was ““being processed”” or that the City was trying to find the proper insurance carrier for his claim. In April 2004, the City wrote a letter to an insurance carrier for Creative Bus Sales, and in May 2004, the insurance carrier wrote to plaintiff that Creative Bus Sales had nothing to do with the operation of the DASH shuttle buses. In June 2004, plaintiff obtained a copy of the police accident report, which allegedly listed Creative Bus Sales as the owner of the bus; when plaintiff went to the address listed on the police report for Creative Bus Sales, he found the offices of First Transit and was told by a person there that First Transit was the contractor hired by the City to operate and manage the DASH shuttle buses.

The foregoing allegations are insufficient to set up the bar of equitable estoppel. Liberally construed, the allegations do not show that First Transit made statements or engaged in conduct relating to the issue of filing a timely suit and inducing plaintiff “*actually and reasonably*” to delay in filing his action. (*Lantzy, supra*, 31 Cal.4th at p. 385 [complaint devoid of any indication that the defendants’ conduct “*actually and reasonably*” induced plaintiffs to forbear suing within limitation period].) Plaintiff fails to persuade us that the court erred in granting First Transit’s motion for judgment on the pleadings on the ground that the action was barred by the statute of limitations.

DISPOSITION

The judgment is affirmed. Defendant First Transit, Inc. is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

WEISBERG, J.*

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.